



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

SW

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/440,149	11/15/1999	ALVIN L. NEELEY	P112554	2595

7590 01/08/2004

ROBERT B HUGHES
HUGHES & SCHACHT PS
SUITE 1
2801 MERIDIAN STREET
BELLINGHAM, WA 98225-2412

EXAMINER

UNDERWOOD, DONALD W

ART UNIT	PAPER NUMBER
----------	--------------

3652

DATE MAILED: 01/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

JAN 08 2004

GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 25

Application Number: 09/440,149
Filing Date: November 15, 1999
Appellant(s): Alvin L. McNeeley, et al

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 17, 2003.

Art Unit: 3641

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: The rejections noted in issues a, b and c on page 8 of the brief are not brought forward in this appeal. The rejections noted in issues d and e on page 8 and 9 are brought forward.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1, 4, 6, 7 and 13 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Art Unit: 3641

The rejection of claims 1-3 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 4 and 5 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 7 and 9 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5, 035, 336	Schmitz	7-1991
4, 662, 526	Schaller	5-1987
2, 111, 017	Blunt (UK Patent Appl.)	6-1983

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-9 and 13 stand rejected under 35 USC 103(a) as being unpatentable over Schmitz in view of Schaller.

Schmitz comprises a lift 30 to raise a manhole cover, a beam 18, 20 and wheeled supports 16 at opposite ends of the beam.

Art Unit: 3641

Schaller comprises a lift for a cover, a beam 6, and a support 5 comprising a pivot 20 and wheels 21. The pivot and wheels are used to move the beam and lift and thus pivot the cover to the side.

It would have been obvious to use wheels at one end and a non-wheeled pivot at the other end of the mechanism in Schmitz in view of the teaching in Schaller because it would permit one to more easily move the cover to the side of the manhole and back over the manhole.

Claims 1-9 and 13 stand rejected under 35 USC 103(a) as being unpatentable over British reference 2, 111, 017 in view of Schaller.

The British reference comprises a lift 13, 17, 19 for lifting a manhole cover, a beam 14, a support 34, 21 at one end of the beam and, supports 22, 23, 34 at the other end.

Schaller as noted above comprises a lift for a cover, a beam 6 and a support 5 comprising a pivot 20 and wheels 21. The pivot and wheels are used to move the beam and lift and thus pivot the cover to the side.

It would have been obvious to provide wheels to the plates 34 at the lower ends of supports 22 and 23 in the British reference in view of the teaching in Schaller because it would permit one to more easily move the cover to the side of the manhole and back over the manhole. Note wheels 21 in the British reference.

(11) Response to Argument

Art Unit: 3641

Appellant's arguments on pages 7-33 and the top of page 34 are moot since the rejections under 35 USC 102 in view of British reference 2, 045, 206 A and Eckloff et al have been withdrawn.

Appellant's argument on pages 34 and 35 regarding Schmitz are correct in that Schmitz does not contain a fixed pivot. This reference is modified in view of the teaching in Schaller as set forth in the rejection. Schaller teaches the use of a fixed pivot.

Appellants' arguments on page 36 regarding the British reference 2, 111,0 17 are correct in that this reference does not contain a fixed pivot. This reference is modified in view of the teaching in Schaller as set forth in the rejection. Schaller teaches the use of a fixed pivot.

Appellants' arguments on pages 36-40 regarding Schaller set forth that Schaller is non-analogous since it relates to a hoist mechanism for moving a cover for an electric arc furnace which is relatively immune to heat and the effects of electric heat. The examiner's position regarding this reference is set forth in the paragraph bridging pages 38 and 39 of the brief. In addition the Board's attention is directed to the classification of Schaller, i.e., class 212, subclass 166. Subclass 166 is directed generically to closure removers not covers for furnaces. One of ordinary skill in the art would have sought out this area.

Appellants' comments regarding claims 3 and 5 set forth on pages 40 and 41 of the brief are directed towards features taught by pivot 20 and wheels 21 in Schaller.

Art Unit: 3641

'Appellants' comments regarding claim 4 set forth on page 40 are directed towards the devices in the primary references which straddle a manhole cover.

Appellants' comments regarding claim 6 set forth on page 41 in the brief are directed to a surface engaging post. Both the British reference 2, 111, 017 and Schaller contain a post.

Appellants' comments regarding claims 7-9 set forth on page 41 and 42 in the brief are directed to hoist features clearly shown in the figures of the primary references.

Appellants' comments regarding claim 13 set forth on page 42 in the brief are directed to moving a manhole cover. Each primary reference does this.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

D. Underwood
January 7, 2004

DONALD W. UNDERWOOD
PRIMARY EXAMINER

Conferees
EL
KM

ROBERT B HUGHES
HUGHES & SCHACHT PS
SUITE 1
2801 MERIDIAN STREET
BELLINGHAM, WA 98225-2412

Underwood/vs
December 4, 2003